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NOTIFICATIONS BY GOVERNMENT

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TELANGANA STATE LEGISLATIVE COUNCIL

BEFORE THE HON'BLE CHAIRMAN

TELANGANA STATE LEGISLATIVE COUNCIL

AT : HYDERABAD

Wednesday, the 16th January, 2019

Present: Sri K. Swamy Goud, Hon'ble Chairman

Disqualification Petition No. 1 of 2018

Between:-

1. Sri Palla Rajeshwar Reddy, M.L.C.
Government Whip,
Telangana Legislative Council,
H.No. 8-2-293/82/Ng/32,
Nandagiri Hills, Jubilee Hills,
Hyderabad.
2. Sri Bodakunti Venkateswarlu, M.L.C.
Government Whip,
Telangana Legislative Council,
Flat No. 179, Road No.10 C,
MPs' & MLAs' Colony,
Gayatri Hills, Hyderabad.

...Petitioners

AND

Sri K. Yadava Reddy, M.L.C.,
Plot No 61/A, Road No.9,
Phase-II, Filmnagar,
Jubilee Hills, Hyderabad.

...Respondent

This petition having come up for hearing before me and after hearing the arguments of Sri P. Mohith Rao, Advocate representing the Petitioners and Sri T. Sujan Kumar Reddy, Advocate representing the Respondent, I pass the following:

ORDER

1. Sri Palla Rajeshwar Reddy, Member of Telangana Legislative Council, Government whip and a Member and leader of Telangana Rashtra Samithi party and another (herein after called "the Petitioners") filed a petition before me on 17.12.2018 under Article 191 r/w Paragraph 2 (1) (a) of Tenth Schedule to the Constitution of India and Rule 6 of the Telangana Legislative Council (Disqualification on Ground of Defection) Rules, (herein after called "the rules") praying that Sri K. Yadava Reddy, Member of Legislative Council (herein after called "the respondent") be disqualified under the Tenth schedule to the Constitution and his seat be declared vacant in the Telangana Legislative Council.

2. In the petition, the petitioners averred that the respondent, after having been elected to the Telangana Legislative Council, indulged in anti party activities in as much as he met the President of Indian National Congress Party, Sri Rahul Gandhi and joined the said party on 14.09.2018 and also canvassed on behalf of the Indian National Congress Party in the pre elections conducted to the Telangana State Legislative Assembly on 07.12.2018, on account of the Assembly being dissolved on 06.09.2018. In support of the contentions of the petitioners, they had Annexed several news paper clippings along with photographs published therein and also news bulletins telecast in this regard in various electronic media channels; and contended that the respondent incurred disqualification on ground of defection as the respondent being an elected member of the Legislative Council set up by the TRS, joined another political party (Indian National Congress) and prayed that the respondent be disqualified under the provisions of tenth schedule to the Constitution of India.

3. I have perused the averments in the petition and the annexed news paper clippings, media reports and videos; having satisfied myself that the petition complies with the requirements of Rule 6 of the Rules and in terms of sub-rule (3) of Rule 7 of the Rules, on 18.12.2018, caused a copy of the petition along with all Annexures thereto be forwarded to the respondent, in relation to whom the petition has been made, with the request to furnish his comments thereon, in writing within 7 days of the receipt of the same. In response thereto, the respondent addressed a letter and sought time till 03.01.2019 for submitting his comments on the said petition; considering his request, he was granted time till 03.01.2019 as the sub-rule (3) of Rule 7 of the Rules, *Inter alia* lays down that a Member, in relation to whom the petition has been made, shall, within 7 days of the receipt of copy of the petition or such further period as the Chairman may have sufficient cause to allow, forward his comments in writing thereon to the Chairman; However, the respondent has filed his reply/ comments to the petition on 03.01.2019. On 09.01.2019, a further notice was sent to the respondent as well as petitioners requesting them to appear personally on 11.01.2019 at 2.30 PM to present their case; whereas the learned counsel for the Respondent sought time. Therefore, on the request of the Learned Counsel for Respondent the matter was adjourned for next day i.e. 12.01.2019. On 12.01.2019, the learned counsel for the Petitioners, Sri P. Mohith Rao and the learned counsel for the Respondent Sri T. Sujan Kumar Reddy attended and reported ready for hearing.

Heard both sides.

Submissions on behalf of the petitioners:-

4. The Petitioners are the members of Telangana Rashtra Samithi (hereinafter referred to as 'TRS' for brevity) which is a "Legislature Party" in the Telangana State Legislative Council and the respondent herein is a member of the TRS party; the respondent herein was nominated by the TRS party for being elected a member to the Telangana State Legislative Council by Members of the Legislative Assembly and got elected on 04.06.2015. It is pertinent to mention here that the respondent herein was a member of TRS party on the date of his election to the Council. Therefore, as per the explanation to para 2(1)(a) of X Schedule to the Constitution, the respondent herein be deemed to belong to TRS party in as much as he was a Member of TRS party on the date of his election to the Council.

5. It is further submitted on behalf of the petitioners that TRS was formed as a Political Party on 27.04.2001 with the stated objectives to have the Geographical area of the present State of Telangana formed into a separate state. On account of serious agitations for separation of Telangana Region from the State of Andhra Pradesh, the Parliament passed the Andhra Pradesh Re-organization Act, 2014 (Act 29 of 2014) creating a new State i.e. State of Telangana with an appointed date of 2nd June, 2014 with 10 Districts. After the Re-organization Act was passed and/or prior to the appointed date, the General Elections were conducted and by that time the TRS party was registered as a Political Party, and had a common election symbol of "CAR" for all the contestants who were nominated as members in respective Assembly Constituencies in the said elections.

6. It is contended that the respondent herein on 14.09.2018 went to Delhi and joined Indian National Congress Party in the presence of its President Sri Rahul Gandhi; his joining Indian National Congress is reported in all the leading News Papers along with Photographs such as Eenadu, The Hindu, Andhra Bhoomi, Deccan Chronicle, The Hans India, Andhra Jyothi etc.. and was also telecast in Electronic Media such as NTV, ETV, TV9, TV5, ABN Andhra Jyothi TV, Sakshi TV, etc; and also canvassed for Indian National Congress Party in the elections that were conducted on 7.12.2018.

7. It is vehemently contended on behalf of the petitioners that the respondent herein has conclusively by his acts and by conduct "voluntarily" given up his Membership of TRS Party within the meaning of the said expression in para 2(1)(a) of the X Schedule to the Constitution.

8. It is further contended that the action on the part of the respondent amounts to "voluntarily giving up his Membership of such political party" the term such political party meaning the TRS Party on whose nomination the respondent got elected as a Member of Legislative Council to the State of Telangana, by Members of Legislative Assembly within the meaning of said expression occurring in Para 2 (1) (a) of the X Schedule to the Constitution of India and explanation provided to sub Para 1 of Para 2 of X schedule to the Constitution of India. And the conduct of the respondent visits the Constitutional bar of disqualification to continue as a Member of the Legislative Council, on account of defection suffered, as mandated under para

2 (1) (a) of the tenth schedule to the Constitution of India. The Learned Counsel for the petitioners also placed reliance on authoritative pronouncement of the Supreme Court in Rajendra Singh Rana and others Vs. Swamy Prasad Mourya and others, Dr. Maha Chandra Singh Vs. Chairman, Bihar Legislative Council, Kihoto Hollohan Vs. Zachillhu etc., Ravi S Naik Vs Union of India and others , G.Vishwanathan Vs Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, Konda Muralidhar Rao Vs Dr.A.Chakrapani and 3 others and Speaker, Orissa Legislative Assembly Vs Utkal Keshari Parida.

In reply to the notice received, the Respondent submitted his comments through his counsel on 03.01.2019; the Petitioners also filed rejoinder to the same on 07.01.2019 and both are taken on record.

Submissions on behalf of the Respondent:

9 The preliminary contention pleaded on behalf of the Respondent is that the petition as filed is not maintainable and the same is liable to be dismissed in limini as the same is not complying with Rule 7 (2) r/w Rule 6(7) of the Telangana Legislative Assembly (Disqualification on Ground of Defection) Rules.

The learned counsel for the Respondent further submitted that the Respondent got elected on 04.06.2015 as a Member of Legislative Council and on the date of his election, he was a member of Telangana Rashtra Samithi party; however, he denied the averment that he travelled to Delhi, met Sri Rahul Gandhi and joined Indian National Congress Party. It has been further contended that in the petition, it was averred that the Respondent was suspended from the Telangana Rashtra Samithi party and therefore, it cannot be contended that he has voluntarily given up his membership of the party and continues to be the deemed member of the same party and as such, the petition is wholly misconceived.

It has been further contended on behalf of the Respondent that the petition is wholly based on newspaper clippings and reports and therefore, the petition cannot be decided basing on the said evidence.

In support of his contentions that he did not join the Indian National Congress party, the Respondent contended that although he attended the public meeting
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which was organized by the Indian National Congress Party and met Smt. Sonia Gandhi and Sri Rahul Gandhi, he attended the meeting only to convey his gratitude to Smt Sonia Gandhi as she is instrumental in formation of a new State of Telangana. It has been further contended that the media has misunderstood this event and misreported it as if he had joined the Indian National Congress Party on that day.

Submissions to the rejoinder filed by the Petitioners:

10. It is contended that the Respondent has admitted that he was belonging to Telangana Rashtra Samithi Party as on the date of his election to the Legislative Council. It is further submitted on behalf of the Petitioners that it is evident from all the newspaper clippings filed along with the petition that the Respondent met Sri. Rahul Gandhi and there is a photo depicting his joining the Indian National Congress party in the presence of Shri Rahul Gandhi and the same has been widely reported in all the newspapers and the Respondent never denied the said news reports and the reports of electronic media till date, except in the reply filed by him. The learned counsel for the Petitioners also drawn my attention to the photograph annexed to the petition (at page 20) and contended that the said photograph in the newspaper evidencing the Respondent joining the Indian National Congress party and 'Congress' Kanduva (a cloth around the shoulder) is being presented by Sri Rahul Gandhi to the Respondent. The learned counsel for the Petitioners also contended that the Respondent has not filed any evidence in support of his reply.

Consideration by the Tribunal:

11. The main contention of the Petitioners is that the respondent was a Member belonging to Telangana Rashtra Samithi Party as on the date of his election to the Council by the Members of Legislative Assembly in exercise of the powers conferred by sub clause (d) of Clause (3) of Article 171 of Constitution of India r/w Clause 4 of that Article, is not disputed during the course of the hearing by the respondent; the respondent having received the petition along with all Annexures filed his comments to the petition, but nowhere, in the said comments, he denied that he was not a member of TRS party as on the date of his election. Therefore, in the absence of a contra pleading or oral submission it can be safely concluded that it is an admitted fact that the respondent was a Member of Telangana Rashtra Samithi Party as on

the date of his election to the Council and be deemed to belong to TRS political party.

12. The petitioners had relied mainly on newspaper clippings and video recordings which appear on various TV channels as proof of the anti party activities of the respondent and having voluntarily given up Membership to the TRS party; the respondent has objected to the use of newspaper clippings and video recordings as evidence by the petitioners contending that newspaper articles cannot be relied upon as evidence in the absence of any corroborative material. However, in the instant case, I see no reason as to why so many news papers and media channels would publish /report something wrongly and if that was so, then the least that was expected from the respondent was to forthwith deny the same and issue clarification / explanation in that regard. Many leading national and regional /state newspapers and media channels did in fact report about the respondent joining the Indian National Congress party in the presence of Sri Rahul Gandhi. I have seen the video records; video recording thus provide ample and irrefutable proof that the respondent had indeed joined Indian National Congress Party and instead of categorically denying or refuting the allegations appearing in the newspaper clippings, media reports , he has himself admitted through his counsel during the course of oral arguments that he had met Sri Rahul Gandhi at Delhi and he joined Indian National Congress Party but he cannot be disqualified either under Article 191 or under the provisions of the tenth schedule and the Rules made thereunder. I have examined the said submission in the light of the provision of tenth schedule to the Constitution of India and there is no such safeguard as contended provided under tenth schedule and on the other hand para 2 (1) (a) of Tenth Schedule makes it very clear that the elected member of the House shall incur disqualification on ground of defection under tenth schedule; the issue on hand, when examined it fit into para 2 (1) (a) of tenth schedule which reads as under:

"2. Disqualification on ground of defection.—(1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) x x x x x

Explanation—For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) x x x x x

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) x x x x x

Therefore, the above contention of the respondent is rejected.

13. Paragraph 2 (1) (a) of the Tenth Schedule states that 'a member of a House belonging to a political party shall be disqualified for being a member of the House, if he has voluntarily given up his membership of such political party'. The term 'voluntarily given up membership' has been amply clarified by the Supreme Court in its judgment, dated the 9th February, 1994, in *Ravi Naik Vs Union of India* [1994 AIR 1558, 1994 SCR (1), 754, 1994 SCC Supl. (2) 641, JT 1994 (1) 551, 1994 SCALE (1) 487], wherein the Court had *inter alia* observed as follows:-

"The words 'voluntarily given up his membership' are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from the member an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

In the same case, the Supreme Court had upheld the decision of the Speaker of the Goa Legislative Assembly disqualifying two MLAs, who were elected on the ticket of

the Maharashtrawadi Gomantak Party (MGP), on the conduct alone of their accompanying the Leader of the Congress (I) Legislature Party in Goa, when he met the Governor to show that he had the support of twenty MLAs.

14. The Supreme Court in its orders, dated the 24th of January, 1996, in *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Another* [1996 AIR 1050, 1996 SCC (2) 353, JT 1996 (1) 607, 1996 SCALE (1) 531], had also *inter alia* observed as follows:

"The act of voluntarily giving up the membership of the political party may be either express or implied."

15. In view of such authoritative pronouncements by the Hon'ble Supreme Court, while deciding the petition in which the allegation is of the violation of paragraph 2 (1) (a) of the Tenth Schedule, the role of the Chairman, as the designated authority, is only in the domain of ascertaining the facts and once the facts are gathered or placed to show some action, express or implied, within the meaning of paragraph 2 (1) (a) of the Tenth Schedule, to take a decision in the matter. The limited role which a Presiding Officer has to perform under the above-cited paragraph of the Tenth Schedule has been amply clarified by the Supreme Court in *Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council & Ors* [(2004) 8 SCC 747], wherein, it had observed as under:-

"It may be noticed that the nature and degree of inquiry required to be conducted for various contingencies contemplated by paragraph 2 of the Tenth Schedule may be different. So far as clause (a) of paragraph 2 (1) is concerned, the inquiry would be a limited one, namely, as to whether a member of the House belonging to any political party has voluntarily given up his membership of such political party."

16. As such, it now remains for me to decide whether expressly or impliedly, that the Respondent has voluntarily given up the membership of his political party, *namely*, TRS Party. From the actions of the Respondent and based on the material/evidence presented before me, it can be inferred that he has voluntarily given up his membership to TRS Party.

17. After taking into account the facts of the case, the Counsel for the respondent's oral submissions during the personal hearing on 12.01.2019 and the judgments of the Hon'ble Supreme Court, which were cited by the Counsel for the Petitioners particularly the observations of the Hon'ble Supreme Court in Ravi S Naik Vs Union of India and similar anti defection cases, it is crystal clear that the respondent, namely Sri K. Yadava Reddy, by his conduct and action has voluntarily given up his membership to the political party, viz., TRS Party, to which he was a member as on the date of his election to the Telangana Legislative Council.

18. Therefore, I hold that the respondent, Sri K. Yadava Reddy has incurred disqualification for being a Member of the Telangana Legislative Council in terms of para 2 (1) (a) of the tenth schedule to the Constitution of India. He has thus ceased to be a Member of the Telangana Legislative Council, with immediate effect. I decide and declare accordingly.

K. SWAMY GOUD,
Chairman,
Telangana Legislative Council.

Hyderabad,
16-01-2019.

V. NARASIMHA CHARYULU,
Secretary to State Legislature.

EXHIBITS MARKED

| Sl. No | Exhibit | Date | Description of the Document |
|--------|---------|------------|---|
| 01 | EXP1 | 4.6.2015 | Notification issued under Section 74 of Representation of the People Act, 1951 issued in G.O.Ms.No.203, General Administration (Elec.) Department, Dt.4.6.2015. |
| 02 | EXP2 | 24.11.2018 | Copy of the Newspaper item published in Andhra Jyothi Newspaper. |
| 03 | EXP3 | 24.11.2018 | Copy of the Newspaper item published in Andhra Prabha Newspaper. |
| 04 | EXP4 | 24.11.2018 | Copy of the Newspaper item published in Vaartha Newspaper. |
| 05 | EXP5 | 24.11.2018 | Copy of the Newspaper item published in Andhra Bhoomi Newspaper. |
| 06 | EXP6 | 24.11.2018 | Copy of the Newspaper item published in Eenadu Newspaper. |
| 07 | EXP7 | | CD relating to Paper Clippings. |
| 08 | EXP8 | | CD relating to Videograph. |

K. SWAMY GOUD,*Chairman,**Telangana Legislative Council.*Hyderabad,
16-01-2019.**V. NARASIMHA CHARYULU,***Secretary to State Legislature.*

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